

I. INTRODUCTION

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ranches located along the Mexican border. This FOIA request also sought records regarding monies paid for the trapping or removal or relocation of burros from the Mojave National Reserve and Death Valley National Park, as well as records regarding monies paid to Mark Meyers and/or Peaceful Valley Donkey Rescue regarding the trapping or removal of burros, from December 10, 2017, to April 10, 2019.

II. JURISDICTION

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA citizen suit provision) and 28 U.S.C. § 1331 (federal question).

III. VENUE

3. Venue in this Court is proper pursuant to 5 U.S.C. § 552(a)(4)(B).

IV. PARTIES

4. Plaintiff, Wild Horse Freedom Federation, is a non-profit organization that, at all times relevant herein, has been headquartered in Magnolia, Texas.

5. Defendant National Park Service is federal agency of the United States, and sub-component of the United States Department of the Interior, and as such, is an agency subject to the FOIA, pursuant to 5 U.S.C. § 552(f).

V. LEGAL FRAMEWORK OF FOIA

6. FOIA requires, *inter alia*, that all federal agencies must promptly provide copies of all non-exempt agency records to those persons who make a request for records that reasonably describes the nature of the records sought, and which conform with

agency regulations and procedures in requesting such records. 5 U.S.C. § 552(a)(3)(A).

7. FOIA requires federal agencies to make a final determination on all FOIA requests that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such request, unless the agency expressly provides notice to the requester of “unusual circumstances” meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(I).

8. FOIA also requires federal agencies to make a final determination on FOIA administrative appeals that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal, unless the agency expressly provides notice to the requester of “unusual circumstances” meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(ii).

9. FOIA expressly provides that a person shall be deemed to have constructively exhausted their administrative remedies if the agency fails to comply with the applicable time limitations provided by 5 U.S.C. § 552(a)(6)(A)(I) - (ii). *See* 5 U.S.C. § 552(a)(6)C).

10. FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from the Federal District Court to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.

11. Under FOIA, the federal agency has the burden to sustain its actions. 5 U.S.C.

§ 552(a)(4)(B).

12. Pursuant to FOIA, this Court may assess attorney fees and litigation costs against the United States if the Plaintiff prevails in this action. 5 U.S.C. § 552(a)(4)(E).

VI. FACTUAL ALLEGATIONS

13. On or about April 10, 2019, WHFF sent a FOIA request to the National Park Service (NPS), seeking all records for the time period of December 10, 2017, to April 10, 2019, that discuss or describe the funding for the trapping or removal or relocation of the burros from t that discuss or describe the funding for the trapping or removal or relocation of the burros from the areas Mojave National Reserve, the Death Valley National Park, from the vicinity of Aja, Arizona, or from any private ranches located along the Mexican border. This FOIA request also sought records regarding monies paid for the trapping or removal or relocation of burros from the Mojave National Reserve and Death Valley National Park, as well as records regarding monies paid to Mark Meyers and/or Peaceful Valley Donkey Rescue regarding the trapping or removal of burros, for the same time period of December 10, 2017, to April 10, 2019.

14. On or about April 10, 2019, WHFF received an email from NPS indicating the agency had received Plaintiff's April 10, 2019 FOIA request, and was processing this record request by forwarding it to the appropriate NPS agency offices.

15. On or about April 16, 2019, WHFF sent an email to NPS inquiring whether a tracking number was assigned to its April 10, 2019, FOIA request.

16. On or about April 18, 2019, NPS sent an email to WHFF indicating that WHFF's April 10, 2019, FOIA request was assigned tracking number NPS-2019-00803.

17. On or about July 29, 2019, Plaintiff WHFF sent an email to NPS, requesting the estimated date of completion for WHFF's April 10, 2019, FOIA request.

18. On or about August 7, 2019, NPS sent an email to WHFF indicating that its April 10, 2019, FOIA request was placed in the normal processing track, and that the agency was waiting to hear back from one of the National Parks named in the request.

19. On or about August 8, 2019, WHFF sent a response email to NPS, inquiring whether NPS's August 7, 2019, email was the agency's final decision.

20. On or about August 8, 2019, NPS sent an email to WHFF indicating that NPS's August 7, 2019, email was not the agency's final decision, and that the agency could not estimate when it would have a final decision for this FOIA request matter.

21. On or about September 5, 2019, WHFF sent an email to NPS, once again inquiring whether NPS had an estimated date that it would provide responsive records to WHFF's April 10, 2019, FOIA request.

22. As of the date of the filing of this action, WHFF has not received any agency decision, nor any of the records requested in its April 10, 2019, FOIA request to the NPS.

VII. CLAIMS FOR RELIEF

23. WHFF realleges, as if fully set forth herein, paragraphs 1-22 previously set forth herein.

24. Defendant NPS has violated FOIA by failing to provide WHFF with all non-exempt responsive records for its April 10, 2019, FOIA request.

25. By failing to provide WHFF with all non-exempt responsive record to its April 10, 2019, FOIA request as described in paragraph 13 above, Defendant NPS has denied WHFF's right to this information as provided by the Freedom of Information Act.

26. Defendant NPS has also violated FOIA by failing to perform an adequate search reasonably calculated to locate all responsive records to WHFF's April 10, 2019, FOIA request.

27. By failing to perform an adequate search reasonably calculated to locate all responsive records to WHFF's April 10, 2019, FOIA request, Defendant NPS has denied WHFF's right to this information as provided by law under the Freedom of Information Act.

28. Unless enjoined by this Court, Defendant NPS will continue to violate WHFF's legal rights to be provided with copies of the records which it has requested in its FOIA request described in paragraph 13 above.

29. WHFF is directly and adversely affected and aggrieved by Defendant NPS's failure to provide responsive records to its April 10, 2019, FOIA request described above.

30. WHFF has been required to expend costs and to obtain the services of a law firm, consisting of attorneys, law clerks, and legal assistants, to prosecute this action.

31. WHFF is entitled to reasonable costs of litigation, including attorney fees

pursuant to FOIA 5 U.S.C. § 552(a)(4)(E).

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter Judgment for WHFF, providing the following relief:

1. Declare Defendant NPS has violated FOIA by failing to provide WHFF with all non-exempt records responsive to its April 10, 2019, FOIA request.
2. Declare Defendant NPS has violated FOIA by failing to complete an adequate search for records responsive to WHFF's April 10, 2019, FOIA request.
3. Direct by injunction that Defendant NPS perform an adequate search for records responsive to its April 10, 2019, FOIA request, and provide WHFF with all non-exempt responsive records to WHFF's April 10, 2019, FOIA request.
4. Grant WHFF's costs of litigation, including reasonable attorney fees, as provided by FOIA, 5 U.S.C. § 552(a)(4)(E); and,
5. Provide such other relief as the Court deems just and proper.

DATED: This 20th day of November, 2019.

Respectfully submitted,

/s/
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